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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 IN RE LUMINENT MORTGAGE CAPITAL,
19 INC. SECURITIES LITIGATION

20 No. C 07-4073 PJH

21 CLASS ACTION

22 MEMORANDUM OF POINTS AND
23 AUTHORITIES IN SUPPORT OF MOTION
24 TO CONSOLIDATE ACTIONS, TO BE
25 APPOINTED LEAD PLAINTIFF AND FOR
APPROVAL OF LEAD PLAINTIFF'S
SELECTION OF LEAD COUNSEL

DATE: November 21, 2007

TIME: 9:00 a.m.

COURTROOM: 3

JUDGE: Hon. Phyllis J. Hamilton

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF RONALD LARSON TO
CONSOLIDATE ACTIONS, TO BE APPOINTED LEAD PLAINTIFF AND FOR APPROVAL OF LEAD
PLAINTIFF'S SELECTION OF LEAD COUNSEL
CASE NO. 3:07-cv-4073-PJH

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CASE NO. 3:07-cv-4073-PJH

PRELIMINARY STATEMENT

Luminent Mortgage Capital, Inc., (“Luminent” or the “Company”) investor Ronald Larson (“Mr. Larson” or “Movant”) hereby moves to consolidate the various related securities fraud class actions filed against Luminent and to be appointed as Lead Plaintiff of a proposed class of persons or entities who purchased or otherwise acquired Luminent securities between October 10, 2006 and August 6, 2007, inclusive (the “Class Period”).¹ 15 U.S.C. § 78u-4(a)(3)(B). Mr. Larson further moves for approval of his selection of the law firm of Schiffriin Barroway Topaz & Kessler, LLP to serve as Lead Counsel for the Class.

Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court shall appoint as Lead Plaintiff the movant or group of movants that has demonstrated the “largest financial interest in the litigation” and has satisfied the typicality and adequacy prongs of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). Mr. Larson has losses totaling approximately \$184,800² as a result of his investments in Luminent during the Class Period.³ In addition to his large financial stake in this litigation, Movant preliminarily satisfies each of the requirements of the PSLRA and Rule 23 and, therefore, is qualified for appointment as Lead Plaintiff in these actions. *See* Plutzik Decl. at Exhibit A.⁴ As demonstrated herein, Mr. Larson is

¹ At least one of the related actions has alleged a differing class period. This difference does not affect consolidation of the related actions because this issue can be resolved when the appointed lead plaintiff files a consolidated complaint. *See In re Microstrategy Sec. Litig.*, 110 F. Supp. 2d 427, 431-32 (E.D. Va. 2000) (consolidating actions alleging different class periods and naming different defendants).

² Mr. Larson has losses of \$184,800 using either the First-In, First-Out ("FIFO") or the Last-In, First-Out ("LIFO") methodology.

³ The losses suffered by Movant are not the same as his legally compensable damages, measurement of which is often a complex legal question which cannot be determined at this stage of the litigation. The approximate losses may, however, be determined from the certification required under Section 21D of the Exchange Act, 15 U.S.C. § 78u(a)(2)(A), and based upon reference to information concerning the current market for the Company's securities.

⁴ Mr. Larson's sworn certification detailing relevant transactions and demonstrating his qualifications pursuant to the federal securities laws are attached as Exhibit A to the Declaration of MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF RONALD LARSON TO CONSOLIDATE ACTIONS, TO BE APPOINTED LEAD PLAINTIFF AND FOR APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL
CASE NO. 3:07-cv-4073-PJH

1 presumptively the most adequate plaintiff and should be appointed Lead Plaintiff.

2 **PROCEDURAL BACKGROUND**

3 The above-captioned actions (the “Related Actions”) are securities purchaser class action
 4 lawsuits that have been brought against certain officers and/or directors of the Company alleging
 5 violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”),
 6 and Rule 10b-5 promulgated thereunder. The first of the Related Actions, *Rosenbaum Capital LLC*
 7 v. *Luminent Mortgage Capital, Inc.*, No. 3:07-cv-04096, was commenced in this jurisdiction on or
 8 about August 9, 2007. Pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(i), on August 9, 2007, the first notice
 9 that a class action had been initiated against defendants was published over a widely circulated
 10 national business-oriented wire service advising members of the proposed class of their right to
 11 move the Court to serve as lead plaintiff no later than October 9, 2007. *See* Plutzik Decl. at Exhibit
 12 B.

13 Mr. Larson is a class member (*see* Plutzik Decl. at Exhibit A) and is timely filing this motion
 14 within the 60 day period following publication of the August 9, 2007 notice pursuant to Section 21D
 15 of the PSLRA.

16 **STATEMENT OF FACTS⁵**

17 Luminent, a Maryland corporation, with its principal executive offices located in San
 18 Francisco, California, is a real estate investment trust (“REIT”) that invests primarily in the United
 19 States agency and other single-family, adjustable-rate, hybrid adjustable-rate and fixed-rate,
 20 mortgage-backed securities, which it acquires in the secondary market. Throughout the Class Period,
 21 Luminent informed investors and the market that its investment strategy consisted of investing in
 22

23 Alan R. Plutzik In Support Of The Motion Of Ronald Larson To Consolidate Actions, To Be
 24 Appointed Lead Plaintiff, And For Approval Of Lead Plaintiff’s Selection Of Lead Counsel (the
 25 “Plutzik Decl.”).

26 ⁵ These facts were derived from the allegations contained in the class action styled as *PEM*
 27 *Resources LP v. Luminent Mortgage Capital Inc.*, No. 3:07-cv-04184-PJH (N.D. Cal. filed Aug. 15,
 2007).

1 “high-quality” residential mortgage loans and mortgage-backed securities. Defendants, however,
 2 failed to disclose that the Company’s investments were not “high-quality” as previously represented,
 3 artificially raising the price of Luminent stock and allowing the Company to raise millions of dollars
 4 in public offerings.

5 For example, on October 10, 2006, the Company announced a public offering of five million
 6 shares of common stock in an underwritten public offering. In the Company’s Prospectus filed with
 7 the SEC, the Company stated that it was able to mitigate its exposure to losses from credit risk by
 8 maintaining a large percentage of its assets in a highly diversified pool of high quality, highly-rated
 9 assets. In addition, the Company stated that it employed rigorous due diligence and underwriting
 10 criteria to qualify whole loan assets for its portfolio in order to mitigate risk. Then, on October 12,
 11 2006, the Company increased its public offering to six million shares at \$10.25 per share, allowing
 12 the Company to earn \$61.5 million in gross proceeds from the sale.

13 After the Company’s public offering, the Company continued to emphasize its strategy of
 14 adding high quality assets. On November 6, 2006, when the Company announced its third quarter
 15 earnings, the Company stated that it added high-quality assets to its balance sheet and financed them
 16 efficiently, securing a stream of long-term, recurring cash flow to support its growing dividend. Trez
 17 Moore “Moore”, President and Chief Operating officer, commented, “Luminent’s risk management
 18 disciplines have largely insulated us from interest rate turbulences, liquidity shocks and secure credit
 19 losses. Our investment disciplines should continue to serve our stockholders well.” Then, on
 20 January 25, 2007, Gail P. Seneca, Luminent’s Chief Executive Officer and Chairman of the Board
 21 announced a securitization of \$706.8 million of prime quality mortgage loans which would
 22 contribute to the sustainability of their dividend over the long-term.

23 In addition, throughout the Class Period, the Company emphasized that despite a challenging
 24 mortgage environment that Luminent investment opportunities would remain strong. For example,
 25 on May 10, 2007, in a press release regarding the Company’s first quarter earnings for 2007, Moore
 26 stated that Luminent was performing well in the challenging mortgage market and that as the market
 27

1 struggled, the Company's investment opportunities increased. Furthermore, Moore stated its credit
 2 profile was strong and that the Company assumed no interest rate risk.

3 Then, on August 6, 2007, the Company shocked investors when it announced that the
 4 Company was experiencing a significant increase in margin calls on its highest quality assets and a
 5 decrease on the financing advance rates provided by its lenders. In addition, the Company
 6 announced that the Board of Directors suspended payment of Luminent's second quarter cash
 7 dividend of 32 cents per share on Luminent's common stock. On this news, the Company's stock
 8 fell \$1.95 per share, or over 30 percent, from the previous day's closing price of \$6.32 to close on
 9 August 6, 2007 at \$4.37, on unusually heavy trading volume.

10 After the Company's shocking news, on August 7, 2007, the Company was downgraded by
 11 JP Morgan and Deutsche Bank. On this news, shares of Luminent fell an additional \$3.29 per share,
 12 or over 75 percent, from the previous day's closing price of \$4.37 to close on August 8, 2007 at
 13 \$1.08 per share, on unusually heavy trading volume.

14 **ARGUMENT**

15 **I. THE RELATED ACTIONS SHOULD BE CONSOLIDATED**

16 The PSLRA provides that where there are multiple actions on behalf of a class asserting
 17 substantially the same claim or claims, a court shall resolve the issue of consolidation before
 18 appointing a lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(ii). Consolidation is appropriate when there
 19 are several actions involving common questions of law or fact. *See Fed. R. Civ. P. 42(a); Siegall v.*
Tibco Software, Inc., No. C 05-2146 SBA, 2006 U.S. Dist. LEXIS 26780, at *5 (N.D. Cal. Feb. 24,
 21 2006). All of the Related Actions are brought on behalf of purchasers of Luminent securities who
 22 purchased in reliance on the materially false and misleading statements and omissions during the
 23 Class Period and assert essentially similar and overlapping claims for alleged violations of the
 24 Exchange Act. Accordingly, these Related Actions should be consolidated.

25 **II. MR. LARSON SHOULD BE APPOINTED LEAD PLAINTIFF**

26 **A. The Procedural Requirements Pursuant To The PSLRA**

1 The PSLRA sets forth a detailed procedure for the selection of a lead plaintiff to oversee
 2 securities class actions brought pursuant to the Federal Rules of Civil Procedure. *See* 15 U.S.C. §
 3 78u-4(a)(3). First, the plaintiff who files the initial action must, within 20 days of filing the action,
 4 publish a notice to the class informing class members of their right to file a motion for appointment
 5 as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). Plaintiff in the first-filed action published a notice
 6 on *Business Wire* on August 9, 2007.⁶ *See* Plutzik Decl. at Exhibit B. This notice indicated that
 7 applications for appointment as lead plaintiff were to be made no later than October 9, 2007. Within
 8 60 days after publication of the required notice, any member or members of the proposed class may
 9 apply to the Court to be appointed as lead plaintiff, whether or not they have previously filed a
 10 complaint in this action. 15 U.S.C. § 78u-4(a)(3)(A), (B).

11 Next, according to the PSLRA, the Court shall appoint as lead plaintiff the movant that the
 12 Court determines to be most capable of adequately representing the interests of class members within
 13 90 days after publication of the initial notice of pendency. 15 U.S.C. § 78u-4(a)(3)(B)(i). In
 14 determining who is the “most adequate plaintiff,” the Exchange Act provides that:

15 [T]he court shall adopt a presumption that the most adequate plaintiff in any private
 16 action arising under this title is the person or group of persons that-

17 aa) has either filed the complaint or made a motion in response to a
 18 notice . . .

19 (bb) in the determination of the court, has the largest financial interest
 20 in the relief sought by the class; and

21 (cc) otherwise satisfies the requirements of Rule 23 of the Federal
 22 Rules of Civil Procedure [pertaining to class actions].

23

24 ⁶ *Business Wire* is a suitable vehicle for meeting the statutory requirement that notice be
 25 published “in a widely circulated national business-oriented publication or wire service.” *See In re*
USEC Sec. Litig., 168 F. Supp. 2d 560, 567 (D. Md. 2001); *Greebel v. FTP Software, Inc.*, 939 F.
 26 Supp. 57, 62-64 (D. Mass. 1996); *Lax v. First Merchs. Acceptance Corp.*, No. 97 C 2715, 1997 U.S.
 Dist. LEXIS 11866, at *2 (N.D. Ill. Aug. 6, 1997).

1 15 U.S.C. § 78u-4(a)(3)(B)(iii); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002); *In re Silicon*

2 Storage Tech., Inc., Sec. Litig., No. C 05-0295 PJH, 2005 U.S. Dist. LEXIS 45246, at *4 (N.D. Cal.

3 May 3, 2005) (Hamilton, J.).

4 **B. Mr. Larson Is “The Most Adequate Plaintiff”**

5 **1. Mr. Larson Has Made A Motion For His Appointment As Lead Plaintiff**

6 Pursuant to the provisions of the PSLRA and within the requisite time frame after publication
 7 of the notice, Mr. Larson timely moves this Court to be appointed lead plaintiff on behalf of all
 8 plaintiffs and class members covered by the Related Actions and any other actions deemed related by
 9 this Court.

10 **2. Mr. Larson Has The Largest Financial Interest**

11 According to 15 U.S.C. § 78u-4(a)(3)(B)(iii), the court shall appoint as lead plaintiff the class
 12 member who represents the largest financial interest in the relief sought by the action. *See In re*
 13 *Cavanaugh*, 306 F.3d at 730. As is demonstrated herein, Mr. Larson (with losses of \$184,800) has
 14 the largest known financial interest in the relief sought by the Class. *See* Plutzik Decl. at Exhibit C.

15 **3. Mr. Larson Otherwise Satisfies Rule 23**

16 According to 15 U.S.C. § 78u-4(a)(3)(B), in addition to possessing the largest financial
 17 interest in the outcome of the litigation, the lead plaintiff must also “otherwise satisf[y] the
 18 requirements of Rule 23 of the Federal Rules of Civil Procedure.” *In re Cavanaugh*, 306 F.3d at
 19 730. Rule 23(a) provides that a party may serve as a class representative if the following four
 20 requirements are satisfied:

21
 22 (1) the class is so numerous that joinder of all members is
 23 impracticable, (2) there are questions of law or fact common to the
 24 class, (3) the claims or defenses of the representative parties are typical
 25 of the claims or defenses of the class, and (4) the representative parties
 26 will fairly and adequately protect the interests of the class.

27 Fed. R. Civ. P. 23(a).

28 Of the four prerequisites to class certification, only two – typicality and adequacy – directly

1 address the personal characteristics of the class representative. Consequently, in deciding a motion
 2 to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of
 3 Rule 23(a), and defer examination of the remaining requirements until the lead plaintiff moves for
 4 class certification. *See Cavanaugh*, 306 F.3d at 730. As detailed below, Movant satisfies both the
 5 typicality and adequacy requirements of Rule 23, thereby justifying his appointment as lead plaintiff.

6 **a. Mr. Larson Fulfills The Typicality Requirement**

7 Under Rule 23(a)(3), the claims or defenses of the representative party must be typical of
 8 those of the class. Typicality exists if claims “arise from the same event or course of conduct that
 9 gave rise to the claims of the other class members and are premised upon the same legal theory.” *See*
 10 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). However, the claims of the lead
 11 plaintiff need not be identical to the claims of the class to satisfy typicality. *Id.*

12 Movant seeks to represent a class of purchasers of Luminent securities which have identical,
 13 non-competing and non-conflicting interests. Mr. Larson satisfies the typicality requirement
 14 because, just like all other class members, he: (1) purchased or acquired Luminent securities during
 15 the Class Period; (2) at prices allegedly artificially inflated by defendants’ materially false and
 16 misleading statements and/or omissions; and (3) suffered damages thereby. *See Tanne v. Autobytel*,
 17 226 F.R.D. 659, 667 (C.D. Cal. 2005). Thus, Movant’s claims are typical of those of other class
 18 members since his claims and the claims of other class members arise out of the same course of
 19 events.

20 **b. Mr. Larson Fulfills The Adequacy Requirement**

21 Under Rule 23(a)(4), the representative party must “fairly and adequately protect the interests
 22 of the class.” The PSLRA directs the Court to limit its inquiry regarding the adequacy of the Movant
 23 to: (1) whether there are any conflicts between the interests of the Movant and the members of the
 24 Class; (2) whether the Movant is an adequate representative of the Class; (3) whether the interests of
 25 the Movant are clearly aligned with the members of the putative Class; and (4) whether there is
 26 evidence of any antagonism between their respective interests. 15 U.S.C. § 78u-4(a)(3)(B). As

1 detailed above, Mr. Larson shares common questions of law and fact with the members of the Class
 2 and his claims are typical of the claims of other class members. Furthermore, Mr. Larson already has
 3 taken significant steps demonstrating that he has and will protect the interests of the Class: he has
 4 executed a sworn certification detailing his Class Period transactions and expressing his willingness
 5 to serve as lead plaintiff; he has timely moved this Court to be appointed as lead plaintiff in this
 6 action; and he has retained competent and experienced counsel who, as shown below, will be able to
 7 conduct this complex litigation in a professional manner. Furthermore, Mr. Larson has the largest
 8 known financial interest, and his “financial stake in the litigation provides an adequate incentive for
 9 the [Movant] to vigorously prosecute the action.” *In re Milestone Sci. Sec. Litig.*, 183 F.R.D. 404,
 10 416 (D.N.J. 1998). Thus, Mr. Larson, in addition to having the largest financial interest, also *prima
 11 facie* satisfies the typicality Rule 23(a)(3)) and adequacy Rule 23(a)(4)) requirements of Rule 23 of
 12 the Federal Rules of Civil Procedure and, therefore, satisfies all elements of the Exchange Act’s
 13 prerequisites for appointment as Lead Plaintiff.

14 **III. THE COURT SHOULD APPROVE MR. LARSON’S CHOICE OF COUNSEL**

15 Pursuant to Section 21D(a)(3)(B)(v) of the Exchange Act, codified at 15 U.S.C. § 78u-
 16 4(a)(3)(B)(v), the lead plaintiff is to select and retain lead counsel to represent the Class, subject to
 17 Court approval. *See In re Cavanaugh*, 306 F.3d at 734 (“While the appointment is made subject to
 18 the approval of the court, the Reform Act clearly leaves the choice of class counsel in the hands of
 19 the lead plaintiff”); *see also Autobytel*, 226 F.R.D at 673 (noting that the Court should not reject
 20 Plaintiff’s choice of counsel unless it is necessary to “protect the interests of the class”) (quoting 15
 21 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa)). In that regard, Movant has selected and retained Schiffrian
 22 Barroway Topaz & Kessler, LLP to serve as Lead Counsel for the Class. Schiffrian Barroway Topaz
 23 & Kessler, LLP has extensive experience in prosecuting complex securities actions and is well
 24 qualified to represent the Class. *See* Plutzik Decl. at Exhibit D. Furthermore, Schiffrian Barroway
 25 Topaz & Kessler, LLP has specialized in prosecuting complex class action litigation for over twenty
 26 years and is currently serving as lead or co-lead counsel in several securities class actions, including
 27

In re Marvell Technology Group, Ltd. Securities Litigation, No. C-06-06286-RMW, currently pending in this District.

Because there is nothing to suggest that Movant or his counsel will not fairly and adequately represent the Class, or that Movant is subject to unique defenses—which is the only evidence that can rebut the presumption of adequacy under the Exchange Act—this Court should appoint Mr. Larson as Lead Plaintiff and approve his selection of Schiffrian Barroway Topaz & Kessler, LLP as Lead Counsel for the Class.

CONCLUSION

For the foregoing reasons, Mr. Larson respectfully requests that the Court: (i) consolidate for all purposes the Related Actions against defendants; (ii) appoint Mr. Larson as Lead Plaintiff; and (iii) approve Schiffрин Barroway Topaz & Kessler, LLP as Lead Counsel for the Class.

Dated: October 16, 2007

Respectfully submitted,

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